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6 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
7 **OF THE STATE OF CALIFORNIA**
8

9 In the Matter of the Application of:

10 **Jacqueline Bradley**

Precedent Decision No. 01 – 03

11 A hearing on this application was held on June 1, 2001, at 10:00 a.m., in San Pablo,
12 California. Present at the hearing was Donna D. Ferebee, Hearing Officer, who was assigned to hear
13 this matter by the Executive Officer of the Victim Compensation and Government Claims Board
14 (Board).

15 The applicant, Jacqueline Bradley, and her attorney, Jaynelle Bell were present.

16 **Claim History**

17 The emergency application was recommended for denial on the March 20, 2000, consent
18 agenda. The regular application was received on March 14, 2000, and was recommended for denial on
19 the June 27, 2000, consent agenda. A timely appeal was received, and the matter was continued and
20 finally heard on June 1, 2001.

21 Ms. Bradley claims injury to her left shoulder, left arm, and left knee and foreleg as a result
22 of this incident.¹ Ms. Bradley claims to have sustained \$3,300 in medical expenses as a result of the
23 crime, and \$6,000 in support loss although her application lists only her own name as the person who
24 relies on her for support. On her application, Ms. Bradley requested assistance in the form of mental
25 health counseling and rehabilitation. Staff has not verified any of the claimed losses.

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28 ¹ According to Ms. Bradley's medical records, she injured her neck and back on a bus in February of 1998, and injured her
29 left shoulder and back during a slip and fall accident in August of 1998. Ms. Bradley also suffered a stroke in 1992, which
affected her vision and caused the need to have a guide dog. In 1994, she experienced symptoms related to carpal tunnel
syndrome.

1 In addition to this claim, Ms. Bradley has filed claim number 635711 arising out of an
2 alleged assault occurring on December 15, 2000, wherein she requests reimbursement for medical,
3 mental health counseling, and relocation expenses.

4 **Summary of Issues**

5 Staff recommended the application be denied because staff determined that there was
6 insufficient evidence that Ms. Bradley was the victim of a qualifying crime.

7 **Findings of Fact**

8 On May 9, 1999, Ms. Bradley was walking with her guide dog when another dog ran
9 towards them and began to fight with her dog. The owner of the other dog, Kenneth Washington,
10 came out of his house and attempted to separate the dogs. During this altercation, Mr. Washington
11 inadvertently stepped on Ms. Bradley's foot. Ms. Bradley reported the incident to the Oakland Police
12 Services Agency on May 12, 1999. No criminal charges were filed.

13 At the hearing, Ms. Bradley declined to provide any oral testimony regarding the facts of the
14 incident, and she did not call any witnesses to testify regarding the incident. Instead, Ms. Bradley
15 stated that everything she wanted to say about the incident was contained in a letter she claimed to
16 have mailed to the Board. Because neither she nor her attorney brought a copy of this letter to the
17 hearing, and the file did not contain the letter, the hearing was concluded and the record held open
18 until 5:00 p.m., on June 15, 2001, to allow time for Ms. Bradley or her representative to forward the
19 letter to the hearing officer.² On June 15, 2001, at approximately 2:00 p.m., the representative sent the
20 hearing officer the letter via fax, and the record was officially closed.

21 The letter, dated May 17, 2001, was addressed to Ms. Bradley's representative only, and was
22 not received by the Board prior to the hearing officer's receipt of it via fax on June 15, 2001.
23 Ms. Bradley states in the letter that the dog was barking and snarling as it ran out and "pounced on her
24 as it reached for her service dog." The letter states that the dog's owner, Mr. Washington, came
25 running out of his yard yelling and cursing and gave his dog a command that apparently made it angrier.
26 The letter goes on to say that Mr. Washington grabbed the dog's neck chain as he cursed at her and her

27 ² Moments after going off the record, Ms. Bradley presented the hearing officer with what she thought was this missing letter.
28 The hearing officer took a copy of it and considered the matter closed. It was not until late that afternoon that the hearing
29 officer discovered that this letter was actually in reference to another of Ms. Bradley's claims. On June 4, 2001, the hearing
officer notified Ms. Bradley's representative of the discrepancy and advised her that she had until June 15, 2001, to forward
the correct letter, if one existed, or to request an extension of time or a new hearing.

1 dog, and then “threw his dog right into me, stepping very hard on my feet himself as he did so.” The
2 letter states that the incident was reported to the police who came immediately but could not locate
3 either Mr. Washington or his dog.

4 Ms. Bradley filed suit against Mr. Washington, and received a default judgment for damages
5 in the amount of \$6,007.05, due to Mr. Washington’s failure to answer the complaint or appear in
6 court. The costs that comprise the amount of the judgment are not clear, but \$590.00 of it is for
7 attorney fees and court filing fees. Ms. Bradley claims that she has been unable to collect any money
8 on the judgment.

9 **Determination of Issues**

10 The Board shall approve an application for assistance if a preponderance of the evidence
11 shows that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss.
12 (Gov. Code, § 13964(a).) At the hearing, the applicant shall have the burden of establishing by a
13 preponderance of the evidence that, as a direct result of a crime, the victim incurred an injury that
14 resulted in a pecuniary loss. (Gov. Code, § 13963(c).)

15 For purposes of the Victims of Crime Program, "crime" means a crime or public offense that
16 would constitute a misdemeanor or a felony if committed in California by a competent adult which
17 results in injury. (Gov. Code § 13960(c).) A crime is a qualifying crime if it results in death, physical
18 injury or threat of physical injury. (Gov. Code, § 13960(b)(1); Cal. Code Regs., tit. 2, § 649(a)(18).)³

19 Factors that may be considered as evidence of a qualifying crime include an admission of
20 guilt to law enforcement, and the filing of a criminal charge for the qualifying crime, but medical or
21 mental health records alone may not be sufficient evidence that a qualifying crime occurred.

22 (Reg., § 653.5(c) and (d).)

23 As stated, Ms. Bradley declined to testify at the hearing, and provided no witnesses who
24 could corroborate the version of the facts as related in the letter. Therefore, the hearing officer was
25 unable to ask questions of Ms. Bradley, or to judge her credibility.

26 Since she first applied for assistance, Ms. Bradley has submitted several written accounts of
27 the incident, not one of which ever alleged that Mr. Washington “threw his dog into her.” This
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29 ³ All citations to regulations are to Title 2, California Code of Regulations.

1 statement is not credited. It is found that Mr. Washington accidentally stepped on Ms. Bradley's foot
2 as he was trying to separate the two dogs.

3 Applying the law to those facts, there is not a preponderance of the evidence that
4 Ms. Bradley incurred an injury resulting in a pecuniary loss *as a direct result of a crime*. It is
5 undisputed that Ms. Bradley received a default judgment for damages against Mr. Washington when
6 he failed to appear for a hearing arising out of a lawsuit Ms. Bradley filed against Mr. Washington. It
7 is also undisputed that Ms. Bradley suffers from some medical problems, but the connection between
8 those medical problems and this incident are not clear. In any event, neither Ms. Bradley's attainment
9 of the civil judgment nor the existence of her medical problems have any bearing on whether a crime
10 was committed against her in this instance. It is found that Mr. Washington accidentally stepped on
11 Ms. Bradley's foot, and no crime was committed.

12 Ms. Bradley has not met her burden of establishing by a preponderance of the evidence that
13 she incurred an injury that resulted in a pecuniary loss as a direct result of a crime.

14 The application is denied. Ms. Bradley is not eligible for program assistance.

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17 Date: June 28, 2001

DONNA D. FEREBEE
DONNA D. FEREBEE
Hearing Officer
Victim Compensation and Government Claims Board

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11 On August 10, 2001, the Victim Compensation and Government Claims Board adopted the
12 attached Decision as a Precedent Decision. The Decision became effective on August 10, 2001.
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14 Date: August 14, 2001

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16 CATHERINE CLOSE
17 Chief Counsel
18 Victim Compensation and Government Claims Board
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